HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JUDRISDICTION
Dated Nainital the June 29th, 2006
Bail Application No. 1090 of 2005

Order on the bail application of accused.

CRIMINAL SIDE

Yamin S/o Faiza
R/o Village – Khampur
Police Station – Chapar
District – Muzaffarnagar (U.P.) …… Applicant

Versus

State of Uttaranchal ……. Opposite Party

In Case Crime No. 141 of 2005
U/s 363, 366, 376, 342 I.P.C.
Police Station – Manglaur
District- Haridwar

Hon'ble J.C.S. Rawat, J.

Heard Sri Manish learned counsel for the applicant, learned AGA for the State and perused the record.

It was contended by the learned counsel for the applicant that the victim was a consenting party to the sexual intercourse committed by the accused-applicant. It was contended that the girl was taken to several places but she had not sought help as such, it seems that she was a consenting party. Assuming the victim was a consenting party, the age of the victim was material for the same. The uncle of the victim had stated that the victim was 15 years of age at the time of commission of the offence. The victim herself stated in her statement recorded u/s 161 Cr.P.C. that she was aged about 15 years. It was contended that the medical report reveals that the age of the victim was in between 16-17 years. The learned A.G.A. refuted the contention and contended that it is settle principle of law, if the evidence of the father of the victim, her relatives and the victim herself shows that the victim was below 16 years of age at the time of commission of offence, it would be a substantive piece of evidence and the medical evidence will be a corroborated peace of evidence. The corroborated piece of evidence cannot prevail over the substantive peace of evidence.

Considering the facts and circumstance of the case in totality, it is not a fit case for bail at this stage.

The bail applicant is rejected accordingly.

(J.C.S. Rawat, J.)

Dated 29.06.2006
Shiv